(3)

No. 03-438

Supreme Court, U.S.
FILED
OCT 23 2003
OFFICE OF THE CLERK

In The
Supreme Court of the United States

RAY VAN ALSTINE, dba
PALM DESERT MOBILE ESTATES,

Petitioner,

v.

THE CITY OF PALM DESERT and
THE PALM DESERT RENT REVIEW BOARD,

Respondents,

THE TENANTS RESIDING AT
PALM DESERT MOBILE ESTATES,

Real Parties in Interest.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

RESPONDENTS' BRIEF IN OPPOSITION

DOUGLAS S. PHILLIPS
Counsel of Record
BEST BEST & KRIEGER LLP
74760 Highway 111, Suite 200
Indian Wells, CA 92210
(760) 568-2611

Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

12 pp

QUESTIONS PRESENTED

QUESTION NUMBER ONE: UNDER THE CITY OF PALM DESERT'S RENT CONTROL REGULATIONS IT IS "PRESUMED" THAT ADJUSTING A LANDLORD'S 1982 NET OPERATING INCOME BY 50% OF THE INCREASE IN THE INFLATION RATE WILL RESULT IN A "FAIR RETURN" IN ALL FUTURE YEARS. IS SUCH AN EVIDENTIARY PRESUMPTION SO ARBITRARY THAT IT VIOLATES THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION?

QUESTION NUMBER TWO: DOES THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION PROHIBIT AN ADMINISTRATIVE AGENCY (OR A REVIEWING COURT) FROM REJECTING UNCONTRADICTED AND UNIMPEACHED EXPERT TESTIMONY REGARDING RATES OF RETURN ON INVESTMENT IN A PRICE REGULATED INDUSTRY, OR FROM UNILATERALLY ESTABLISHING A RATE OF RETURN THAT IS NOT SUPPORTED BY EXPERT TESTIMONY?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
I. RESPONDENTS' BRIEF AS TO QUESTION NO. ONE	1
II. RESPONDENTS' BRIEF AS TO QUESTION NO. TWO	5
III. CONCLUSION	6

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Fisher v. City of Berkeley, Cal., 475 U.S. 260 (1986) 3

Houston E.&W. Texas Ry. CO. v. United States, 234 U.S. 342 (1914) 3

Leary v. United States, 395 U.S. 6 (1969) 4

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 3

Mobile, J.&K.C.R. Co. v. Turnipseed, 219 U.S. 35 (1910) 4

Munn v. Illinois, 94 U.S. 113 (1877) 3

Nebbia v. New York, 291 U.S. 502 (1934) 3

Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978) 3

Sunshine Co. v. Adkins, 310 U.S. 381 (1940) 3

Tot v. United States, 319 U.S. 363 (1942) 4

Ulster County Court v. Allen, 442 U.S. 140 (1979) 4

User v. Turner, Alkhorn Mining Co., 428 U.S. 1 (1976) 4

West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) 3

Yee v. Escondido, California, 503 U.S. 519 (1992) 3

STATE CASES

Howard v. Owens Corning, 72 Cal.App.4th 621 (1999) 6

Kavanau v. Santa Monica Rent Control Board, 16 Cal.4th 761 (1997) 3, 4

TABLE OF AUTHORITIES – Continued

Page

Lyssek v. Walcom, 258 Cal.App.2d 136 (1968)..... 6

People v. Wells, 33 Cal.2d 330 (1949)..... 4

I.

RESPONDENTS' BRIEF AS TO QUESTION NO. ONE

The first question presented by Petitioner is whether a rebutable presumption in a municipal rent control ordinance is so arbitrary that it violates the Due Process Clause of the Federal Constitution. Petition for Writ of Certiorari ("Pet.") at i. The Respondents respectfully urge this Court to deny the Petition with respect to the first question because, as discussed below, the case is guided by ample authority, which supports the decision below.

The City of Palm Desert (The City) adopted a rent-control ordinance for mobile home parks in 1983, which was codified as Chapter 9.50 of The Palm Desert Municipal Code (The "Ordinance"). The Ordinance establishes a rent review Board (Section 9.50.040; "Board") and authorizes the Board to adopt rules to implement the Ordinance (Section 9.50.050; subd. F). Among the rules adopted by the Board are guidelines for hardship rent increases ("Guidelines").

The Ordinance provides that mobile home park owners may automatically raise the rents in a park once per year, which increase may not exceed a sum equal to three-quarters of the increase in the consumer price index (CPI) for the preceding twelve months, times the existing monthly rent. (Section 9.50.060; "Mandatory Rent Increase.") An owner may also petition the Board for permission to impose a "hardship increase" greater than allowed by Section 9.50.060, on the ground that a "lesser increase would create a hardship for the owner." (Section 9.50.070, subd. A; "Hardship Increase.") The Guidelines provide that the Board should establish rents at a level that will

provide landowners with a fair return on their property. (Guidelines, Section 100.) The Guidelines establish a presumption that the net operating income [NOI] produced by the mobile home park property during the base year [1982] provided a fair return on property during that year. (Guidelines, Section 100.) The Guidelines also establish a presumption that if the owner has imposed mandatory rent increases authorized by Section 9.50.060, and if the owner's current NOI is equal to the owner's NOI in 1982, plus fifty (50) percent of the increase in the CPI since 1982 (Guidelines, Section 101, subd. A.), then the owner is receiving a fair return. (Guidelines, Section 101, subd. B.) If an owner's current NOI is below that level, the Board must grant a hardship increase to the extent necessary to raise the owner's current NOI to that level. If an owner's NOI is at or above that level, then the owner must affirmatively demonstrate entitlement to an additional increase. A landlord may present unlimited evidence and arguments to the Board in support of a discretionary hardship application rebutting the presumption. Interested third parties may also present unlimited evidence and arguments. The Board may consider any and all evidence or arguments it deems relevant to valuing the landlord's property such that the result conforms with the existing laws and does not result in a confiscatory taking. Relevant methods for valuing a landlord's property include, but are not limited to: comparable sales, replacement costs, or ordinary investments. If a landlord successfully rebuts the presumption, the Board may award the landlord a discretionary rent increase in the amount the Board deems necessary to achieve a fair return. (Guidelines Section101, subd. B.)

Mobile home rent control is a form of price control or rate regulation. Government efforts to impose price controls have been regularly upheld by this Court. *Munn v. Illinois*, 94 U.S. 113 (1877) (upholding railroad rate regulations); *Houston E.&W. Texas Ry. CO. v. United States*, 234 U.S. 342 (1914) (same); *Nebbia v. New York*, 291 U.S. 502 (1934) (upholding minimum price for milk); *Sunshine Co. v. Adkins*, 310 U.S. 381 (1940) (upholding minimum price for coal); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (upholding minimum wage legislation); *Fisher v. City of Berkeley, Cal.*, 475 U.S. 260 (1986) (upholding rent control against anti-trust challenge); *Yee v. Escondido, California*, 503 U.S. 519 (1992) (declining to address whether mobile rent control constitutes regulatory taking).

In *Yee*, supra, this Court rejected the claim that a mobile home rent control ordinance, which limited a landlord's ability to evict tenants and control the sale of mobile homes on its property, resulted in per se taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). The Court emphasized that "where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of regulation or the extent to which it deprives the owner of the economic use of property suggest that the regulation has unfairly singled out the property owner to bear a burden that should borne by the public as a whole." *Id.* at 522-523 (*Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978)).

The Supreme Court of California has already fashioned rules to remedy confiscatory rent controls. (*Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal.4th 761 (1997)). The *Kavanau* court noted that "the economic judgments

required in rate proceedings are often hopelessly complex.... The Constitution is not designed to arbitrate these niceties." *Kavanau v. Santa Monica Rent Control Board,* 16 Cal.4th 761, 778 (1997), quoting *Duquense Light Co. v. Barasch*, 488 U.S. 299, 314 (1989).

The authorities support the decision below upholding the presumption. A legislative presumption of one fact from evidence of another is not arbitrary and does not constitute a denial of due process, where there is a rational connection between the fact proved and the ultimate fact presumed. (*Tot v. United States*, 319 U.S. 363, 467-468 (1942); *Mobile, J.&K.C.R. Co. v. Turnipseed*, 219 U.S. 35, 43 (1910); *People v. Wells,* 33 Cal.2d 330, 346 (1949). There is a sufficiently rational connection if it can be said with substantial assurance that, if the proved fact is true, then the presumed fact is more likely than not to be true as well. *Ulster County Court v. Allen*, 442 U.S. 140, 165, 166, n. 28 (1979); *Leary v. United States*, 395 U.S. 6, 36 (1969). Determining rationality is a highly empirical process, neither commonplace or within the judicial competence, and significant weight should be accorded to the capacity of the legislative body in its determination of rationality. *User v. Turner, Alkhorn Mining Co.*, 428 U.S. 1, 28 (1976).

Legislative acts adjusting the burdens and benefits of economic life carry a presumption of constitutionality. *User v. Turner Alkhorn Mining Co.*, supra, 428 U.S. at p. 15. The burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. (*Ibid*). The person challenging that decision must offer evidence demonstrating that, as a matter of fact, the presumed fact is not more likely to be true when the preliminary facts are true.

Although Petitioner offered evidence that the presumption was rebutted in his case, that does not make the presumption arbitrary in *all* cases. The presumption is rebutable, not conclusive. Neither the Ordinance nor the Guidelines preclude the Board from considering any other factors that influence a fair return. To the contrary, the Board is required to admit and consider all relevant evidence that an applicant for a discretionary hardship increase wishes to offer. (Section 9.50.070, subd. E&W.)

The standards and procedures adopted by The City of Palm Desert in this case afford the Board sufficient flexibility to avoid confiscatory results. Ample authority supports the finding that the evidentiary presumption in the Ordinance does not violate the Due Process Clause of the Federal Constitution.

II.

RESPONDENTS' BRIEF AS TO QUESTION NO. TWO

The second question presented by the Petitioner is whether uncontradicted expert evidence presented at an administrative hearing is always binding on an administrative agency decisionmaker (here the Board) or on a reviewing court.

The Court of Appeal gave full consideration to that question. The Court found that uncontradicted evidence is not necessarily conclusive on the finder of fact. The Court of Appeal correctly found that the Board, as the finder of fact, was free to reject uncontradicted evidence so long as it did not act arbitrarily. Ample California authority has held that uncontradicted expert testimony may be rejected if the trier of fact finds that one or more of the facts upon

which the expert's opinion is based has not been proven by the proponent of that opinion, or has been disproved by the opposing party. (*Howard v. Owens Corning*, 72 Cal.App.4th 621, 633 (1999); *Lyssek v. Walcom*, 258 Cal.App.2d 136, 156 (1968)).

Petitioner failed to show that in rejecting the Petitioner's expert's opinion, the Board acted arbitrarily. In rate-setting cases such as this one, where the issues are complex and within the competence of the Board, and not the courts, the Board may reject uncontradicted expert testimony. The new rule that Petitioner proposes would improperly restrict administrative agencies from making decisions within their field of expertise. Such a rule should not be adopted by this Court.

III.

CONCLUSION

The Petitioner protests two narrow aspects of the Respondents' rent control ordinance. Both aspects (and others) are a matter for the Respondents' body politic to address. This case presents a local concern that does not rise to the level of national significance and Constitutional importance appropriate for decision by this Court.

For all these reasons, the Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Dated: October 23, 2003

Respectfully submitted,

DOUGLAS S. PHILLIPS
Counsel of Record
BEST BEST & KRIEGER LLP
74760 Highway 111, Suite 200
Indian Wells, CA 92210
(760) 568-2611

Attorney for Respondents